

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**JOHN SUGGS, ANDRE LANE, RICHARD ROSADO,
and RYAN PRZESIEK,**

Plaintiffs,

-V-

9:13-CV-359 (NAM/TWD)

**DR. TERRI MAXYMILLIAN, JEFF NOWICKI,
PETER RUSSELL, and ANN SULLIVAN,**

Defendants.

APPEARANCES:

Bond, Schoeneck & King, PLLC
George H. Lowe, Esq., of counsel
One Lincoln Center
Syracuse, New York 13202
Attorney for Plaintiffs

Hon. Eric T. Schneiderman, Attorney General of the State of New York
Christopher W. Hall, Esq., Assistant New York State Attorney
The Capitol
Albany, New York 12224
Attorney for Defendants

Hon. Norman A. Mordue, Senior U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiffs filed a *pro se* complaint on April 1, 2013. On March 28, 2014, United States Magistrate Judge Thérèse Wiley Dancks granted plaintiffs' request for appointment of counsel and stayed the remaining pretrial deadlines pending further order. On September 2, 2014, Magistrate Judge Dancks appointed Bond, Schoeneck & King, PLLC, as *pro bono* counsel for plaintiffs. On December 5, 2014, defendants made the instant motion (Dkt. No. 37) for summary judgment. On July 24, 2015, plaintiffs moved (Dkt. No. 51) for leave to file a first amended

complaint.

Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge Thérèse Wiley Dancks issued a Report and Recommendation (Dkt. No. 58) recommending that plaintiffs' motion for leave to file a first amended complaint be granted; that a new discovery scheduling order be issued; that defendants' motion for summary judgment be denied without prejudice to refiling after the conclusion of discovery; and that Clerk be directed to correct the docket to reflect changes in the parties.¹

Objections to the Report and Recommendation were due on or before October 1, 2015. Defendants filed their objection on September 28, 2015. Plaintiffs' counsel has informed the Court that he does not intend to submit anything further. Therefore, the Court proceeds to address the Report and Recommendation and defendants' objections thereto. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts *de novo* review.

Defendants oppose amendment of the complaint primarily on the ground of futility. The Court finds, however, as does Magistrate Judge Dancks, that plaintiffs have adequately shown that there are triable issues of fact regarding the claims in the proposed first amended complaint, and that plaintiffs are entitled to counseled discovery. On *de novo* review of Magistrate Judge Dancks' thorough Report and Recommendation, defendants' objection thereto, and the papers underlying both pending motions, the Court accepts the Report and Recommendation.

It is therefore

ORDERED that the United States Magistrate Judge Thérèse Wiley Dancks' Report and

¹ The changes in the parties are reflected in the caption of the proposed first amended complaint (Dkt. No. 51) and in this Memorandum-Decision and Order.

Recommendation (Dkt. No. 58) is accepted in its entirety; and it is further

ORDERED that plaintiffs' motion for leave to file a first amended complaint (Dkt. No. 51) is granted; and it is further

ORDERED that the Clerk's Office is directed to file plaintiffs' proposed first amended complaint (Dkt. No. 51-2, pp. 4-13) as the first amended complaint herein, and that it become the operative pleading in the case; and it is further

ORDERED that a new discovery schedule be agreed upon with Magistrate Judge Dancks; and it is further

ORDERED that defendants' motion for summary judgment (Dkt. No. 37) is denied; and it is further

ORDERED that the Clerk's Office is directed to correct the docket to show the substitution of Peter Russell, currently the Acting Executive Director of CNYPC, for former Executive Director Maureen Bosco, as a defendant in the case; the substitution of Ann Sullivan, currently the Commissioner of the New York Office of Mental Health, for former Acting Commissioner of the New York Office of Mental Health Kristin Woodlock, as a defendant in the case; and the termination of Raymond Lagree as a plaintiff in the case.

IT IS SO ORDERED.

Date: September 30, 2015
Syracuse, New York



Norman A. Mordue
Senior U.S. District Judge